

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 142

(T.D. 85-161)

Customs Regulations Amendments Relating to Acceptance of Formal Entries With Unsecured Bonds for Certain Importations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to acceptance of formal entries with unsecured bonds for certain importations. The amendment gives district directors authority to waive the necessity of having surety or cash deposit on formal entry bonds for commercial importations valued over \$250 but not over \$2,500. This waiver could only be granted when the importer has not been delinquent or otherwise remiss in any transaction with Customs and the entry summary documentation is filed and estimated duties, if any, are deposited prior to release of the merchandise. Further, the waiver would not apply to (1) quota merchandise, (2) any type of merchandise which cannot be easily appraised or classified, or (3) any type of merchandise where there may be, based on past experience, a question of redelivery. Customs does not believe the minimal risk to the revenue justifies the increased cost to the importing community for a surety on a bond covering merchandise valued at not more than \$2,500.

EFFECTIVE DATE: October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: William Rosoff, Carriers, Drawback and Bonds Division (202-566-5856), Operational Aspects: Herbert Geller, Duty Assessment Division, (202-535-4161). U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484) generally requires that all commercial imports be covered by a formal

entry. One of the listed exceptions in 19 U.S.C. 1484 is for entry under regulations prescribed pursuant to section 498, Tariff Act of 1930, as amended (19 U.S.C. 1498). Section 498 was amended by Pub. L. 98-573, the Trade and Tariff Act of 1984, signed October 30, 1984, to increase to \$1,250 the amount of merchandise which may be imported under the informal entry procedures in certain instances.

Section 142.4, Customs Regulations (19 CFR 142.4), provides that, with certain exceptions, merchandise shall not be released from Customs custody at the time Customs receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, unless covered by a bond executed by an approved corporate surety or secured by cash deposits or obligations of the United States.

While the imposition of bonding and surety requirements is necessary both in terms of import control and revenue protection for large commercial shipments, Customs believes that the same rationale does not apply to small shipments.

Since February 4, 1980, the North Central Customs Region (Chicago) has been conducting a pilot program of accepting formal entries valued not more than \$1,000 without surety on the required bond. The program has been running smoothly with no incidents requiring redelivery of merchandise or the imposition of a penalty.

For the foregoing reasons, Customs believed that there was no justification in terms of cost benefit or public service to support the continued imposition of the bonding requirement for certain entries. Accordingly, on December 21, 1983, a notice of proposed rule-making (NPRM) was published in the Federal Register (48 FR 56401) in which Customs proposed to amend § 142.4, to eliminate the necessity of providing a bond supported by surety or cash deposit on small value shipments (i.e. those valued in excess of \$250 but not more than \$1,000) which, by law, require a formal entry.

The NPRM proposed to give district directors authority to waive the necessity of having surety or cash deposit on formal entry bonds for commercial importations valued over \$250 but not more than \$1,000. The NPRM provided that this waiver could only be granted if the importer had not been delinquent or otherwise remiss in any transaction with Customs. Further the waiver would not apply to (1) quota merchandise, (2) any type of merchandise which could not be easily appraised or classified, or (3) any type of merchandise where there may be, based on past experience, a question of redelivery.

Several comments were received in response to the NPRM. Based upon those comments, which are discussed below, and further review of the matter, certain changes have been made to the proposed regulations.

DISCUSSION OF COMMENTS

Several commenters were concerned about the possibility of loss of revenue to the Government and suggested that the proposal be modified to require the deposit of duties prior to release of goods.

While it was Customs' intention to require deposit of estimated duties prior to release of the merchandise, this was not explicitly stated in the NPRM. To insure that this is understood, § 142.4(c) has been modified to include the requirement for deposit of estimated duties, if any, prior to release of the merchandise. Customs believes that this requirement will not only protect the revenue but will also increase cash flow.

One commenter indicated that, in its opinion, Customs will require additional manpower to enforce the proposal.

Customs does not agree. Customs experience in the Chicago test has not borne out this comment. The purpose of the proposal was to implement Customs operational philosophy of selectivity (i.e. the assessment of risk matched with appropriate enforcement response). Experience demonstrates low delinquency risk in the \$251-\$2,500 formal entries range. Personnel freed up from review in this area will be more able to concentrate on higher risk activities in merchandise entry. Because the risk has been shown to be minimal up to \$2,500, it has been decided to increase the dollar limitation from the \$1,000 level proposed in the NPRM to \$2,500 in the final rule.

Two commenters raised concern regarding import-sensitive merchandise and opined that liberalizing procedures will increase document irregularities and increase opportunities for fraud.

Customs does not agree. There will be no change in the documentation requirements (i.e. formal entry requirements) under this procedure. The procedure, primarily aimed at one time or infrequent importers, requires documentation currently required to be filed and estimated duty payment, if any, to be made prior to the merchandise being released. This results in better enforcement. An importer following the procedures set forth in this document will be filing an entry summary and relinquishing the immediate release of the merchandise until the documentation is approved by Customs.

Another commenter stated that statistics on imported commodities would be skewed by not including nonsurety bond entries.

Statistical reporting is in no way affected by this procedure. Since entry summary documents are required, Customs will still be in a position to gather statistics on imported commodities.

One commenter stated that the proposal would put Customs in the position of competing with sureties.

Customs is not competing with sureties. Customs will treat low value importations in the same manner as informal entries (i.e. duties paid prior to release of merchandise). This procedure will benefit one time or infrequent importers in clearing Customs with

little expense for low value shipments. Further, as other commenters pointed out, the preponderance of formal entries are covered by term bonds. These commenters further noted that the cost for a bond for a regular importer is, considering all other costs, insignificant. Thus, for the routine importer, this procedure will have little or no effect on the cost associated with importing. It is doubtful a regular importer would want a delay, however slight, in the release of its shipment pending documentation review. However, for the one time or infrequent importer, for which this procedure is primarily aimed, the delay may not be considered significant.

Another commenter wanted to know how Customs would regulate entries that fall within the proposal and keep large shipments from being split into low value increments to avoid the need for surety.

Customs will review each entry prior to release of the merchandise to assure compliance with appropriate statutes and regulations. Since this procedure is primarily for one time or infrequent importers, it is doubtful that regular importers, already possessing bonds, would go to the extra expense of splitting shipments to save on surety costs which are probably far less than the costs involved in splitting shipments.

Two commenters suggested that the Chicago pilot program could have been severely abused.

Customs analysis of the Chicago pilot program revealed no abuse or potential for abuse.

Another commenter stated that examination of imports under the procedure should include compliance with marking requirements before release.

Customs agrees. Marking requirements must be met prior to release or a bond with surety will be required. This would fall within the requirement in the final rule that the merchandise not be of a type that could be subject to redelivery.

Finally, one commenter stated that this proposal was one of the alternatives proposed in an October 14, 1983, Federal Register advanced notice of rulemaking (48 FR 46805) relating to the necessity of requiring surety on Customs bonds, and that no action should be taken until the issues set forth in that document are resolved.

Customs does not agree. The subject matter of this final rule was under development for several months before the October 14, 1983, advance notice was prepared. Because the subject matter overlapped, this matter was included in the October 14, 1983, advance notice. Its inclusion, however, is not a bar from proceeding with this proposal as a separate matter.

In light of the foregoing, the final rule is adopted as set forth below.

EXECUTIVE ORDER 12291

These amendments do not meet the criteria for a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

In the NPRM it was indicated that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) were not applicable to these amendments because the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. However, public comment was requested on the effects, with numerical estimates of the proposal on costs, profitability, competitiveness, and employment in small entities. An analysis of the comments received has confirmed that the conclusion set forth in the NPRM was correct.

Accordingly, it is certified under the provisions of § 3, Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 142

Customs duties and inspection, Imports.

AMENDMENTS TO THE REGULATIONS

Part 142, Customs Regulations (19 CFR Part 142), is amended as set forth below.

PART 142—ENTRY PROCESS

1. The general authority citation for Part 142, Customs Regulations (19 CFR Part 142), continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

2. The first sentence of § 142.4(a) is amended by inserting the words "or paragraph (c) of this section," after the words "Except as provided in § 10.101(d) of this chapter".

3. A new paragraph (c) is added to § 142.4 to read as follows:

§ 142.4 Bond requirements.

* * * * *

(c) *Waiver of surety or cash deposit.* (1) The district director may waive the requirement for surety or cash deposit on the bond required by this section when (i) the value of the merchandise which

the bond secures does not exceed \$2,500, (ii) the entry summary documentation is filed and estimated duties, if any, are deposited prior to release of the merchandise and (iii) the importer has not been delinquent or otherwise remiss in any transaction with Customs. (2) This authority to waive surety or cash deposit does not apply to (i) quota merchandise, (ii) any type of merchandise which, in the opinion of the district director, cannot be easily appraised or classified, or (iii) any type of merchandise where there may be, in the opinion of the district director based on past experience, a question of redelivery.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: August 28, 1985.

DAVID D. QUEEN,

Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, September 26, 1985 (50 FR 38979)]

19 CFR Part 10

(T.D. 85-162)

Customs Regulations Amendments Relating to Waiver of Certificate of Registration for Articles Exported for Repairs, Alterations, or Processing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for waiver of the Certificate of Registration required for entry of articles exported from the U.S., for repair, alteration, or processing abroad, upon payment of duty on only the value of the work done abroad, when the importer satisfies Customs that exportation of the articles from the U.S. occurred. These amendments are necessary because, in many instances, the carrier or shipper of the exported article fails to properly register them with U.S. Customs before exportation. This must be done for the importer to claim entry of the articles under special tariff provisions subjecting them to duty only on the work done abroad, not on the value of the articles.

EFFECTIVE DATE: October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Leo Wells, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2957).

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Section 10.8(a), Customs Regulations (19 CFR 10.8(a)), provides that before exporting articles which are subject on return to the U.S. to duty on the value of repairs or alterations performed abroad, as provided for in item 806.20, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), a Certificate of Registration (the top portion of Customs Form 4455) shall be filed (in an original only) by the owner or exporter with the district director of Customs before the departure of the exporting conveyance. Section 10.9(a), Customs Regulations (19 CFR 10.9(a)), sets forth similar requirements for articles exported for processing and later returned to the U.S. under item 806.30, TSUS, except that the Customs Form 4455 must include a statement by the exporter or owner on the reverse side, containing the name and address of the U.S. manufacturer and other U.S. processing details. The requirements for supervision by Customs before exportation of the articles are intended to aid Customs officials in determining what repairs, alterations, or processing were done abroad and what their cost or value was, and to ensure that the returned articles are the same articles that were exported.

Waiver of the Certificate of Registration is provided for by both §§ 10.8(k) and 10.9(k), Customs Regulations, provided the district director is satisfied that the returned articles are entitled to entry under either item 806.20 or 806.30, TSUS, and that the failure to comply with registration requirements was due to inadvertence, mistake, or inexperience, and not to negligence or bad faith.

Customs brokers along the U.S./Canadian border claim that they, acting on behalf of the importer and/or exporter, are often unable to comply with the registration requirements because the carrier or shipper of the articles exported for work abroad fails to present the registration form to U.S. Customs at the border crossing station before exportation. Thus, there is no record of Customs supervision or approved waiver of this supervision before exportation. Therefore, the importer's subsequent claim for entry under item 806.20 or 806.30, TSUS, and duty only on the foreign work performed, is not allowed unless the failure to register with Customs is attributed to inadvertence, mistake, or inexperience, and not to negligence or bad faith. Since, in many cases, it is the shipper's or carrier's negligence which caused the failure to register with Customs, the registration form may not be waived and the requested entry under 806.20 or item 806.30, TSUS, is denied.

To relieve the importer of the consequences of the negligence of the carrier or shipper, over whom the importer may have no control, by notice published in the Federal Register on September 10, 1984 (49 FR 35509), it was proposed that §§ 10.8(k) and 10.9(k) be amended to allow for waiver of the Customs Form 4455 in instances where the importer provides sufficient documentation to

Customs to prove actual exportation of the articles from the U.S., such as a Canadian landing certificate, or similar acceptable documentary proof. Interested parties were given until November 9, 1984, to submit written comments on the proposal. Of the seven comments received in response to the notice, all were in favor of the suggested change. A discussion of these comments and our responses follows:

DISCUSSION OF COMMENTS

Comment: Two commenters requested that the waiver of the Certificate of Registration be extended to importations under item 810.20, TSUS, for tools of the trade. Another commenter believed that the proposed rule should apply to § 10.68, Customs Regulations (19 CFR 10.68), relating to articles taken abroad for exhibition or temporary use (e.g., theatrical effects, commercial travelers samples, tools of trade), because the circumstances of § 10.68 are similar to those in §§ 10.8 and 10.9.

Response: Although the circumstances covered by these sections are similar in that they involve situations in which a Customs Form 4455 is used for the duty-free importation of articles taken abroad for repair, alteration, use, or exhibition and then returned to the U.S., the suggestion is beyond the scope of the proposal. The proposal dealt only with possible changes to §§ 10.8 and 10.9. However, Customs will study this matter separately, to determine what action, if any, should be taken.

Comment: One commenter suggested that the words "and not to negligence or bad faith" be eliminated from proposed §§ 10.8(k)(1) and 10.9(k)(1) because this phrase is not in conformity with the intent of the proposed amendments.

Response: Customs agrees. Accordingly, proposed §§ 10.8(k) and 10.9(k) have been modified in the final rule by removing that portion of the section which provided for waiver of Customs Form 4455 if the district director is satisfied that the failure to comply with the registration requirement was due to inadvertence, mistake or inexperience, and not to negligence or bad faith.

Comment: Another commenter suggests that Canadian Customs entries and Canadian Customs invoices, as well as bills of lading and airway bills, be included as documents acceptable to Customs as proof of exportation.

Response: Customs agrees. However, it is Customs opinion that the district director should have discretion to require additional documentation if believed necessary as proof of exportation. Further, while the commenter is concerned about articles exported to Canada, the provisions of §§ 10.8 and 10.9 are applicable to articles exported to any foreign country. Accordingly, the documentary examples in §§ 10.8 and 10.9 have been modified in the final rule to relate to any particular country. Sections 10.8(k) and 10.9(k) are revised in the final rule to reflect these changes.

After consideration of the comments received, and upon further review of the matter, it has been determined advisable to adopt the amendments with the modification noted above.

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of § 605(b), Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal authors of this document were Susan Terranova and John Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 10

Exports, Imports, Repairs, Alterations, Processing abroad.

AMENDMENTS TO THE REGULATIONS

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 is revised to read as set forth below. Authority citations appearing elsewhere in Part 10 are removed.

AUTHORITY: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.

- a. § 10.17 also issued under 19 U.S.C. 1401a, 1402;
- b. § 10.22 also issued under 19 U.S.C. 1304;
- c. §§ 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;
- d. § 10.53 also issued under 16 U.S.C. 1521, *et seq.*;
- e. § 10.59 also issued under 19 U.S.C. 1309, 1317;
- f. §§ 10.61, 10.62, 10.63, 10.64, 10.64a also issued under 19 U.S.C. 1309;
- g. §§ 10.62a, 10.65 also issued under 19 U.S.C. 1309, 1317, 1555, 1556, 1557, 1646a;
- h. §§ 10.70, 10.71 also issued under 19 U.S.C. 1486;

i. §§ 10.80, 1081, 10.82, 10.83 also issued under 19 U.S.C. 1313 (e) and (i);

j. §§ 10.152, 10.153 also issued under 19 U.S.C. 1321;

k. §§ 10.171-10.178 also issued under 19 U.S.C. 2461, *et seq.*;

l. §§ 10.191-10.198 also issued under 19 U.S.C. 2701, *et seq.*;

2. The first sentence of § 10.8(k), Customs Regulations (19 CFR 10.8(k)), is removed and the following is inserted, in its place.

§ 10.8 Articles exported for repairs or alterations.

* * * * *

(k) In any case where an imported article was exported for repairs or alterations without compliance with the registration requirements of this section, the district director, only if satisfied that the returned article is entitled to entry under item 806.20, TSUS, may waive the production of the Customs Form 4455. The importer may establish eligibility for entry under item 806.20, TSUS, by providing sufficient documentation to Customs to prove actual exportation of the article from the U.S., such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill. The district directors may require such additional documentation as is deemed necessary as proof of exportation. * * *

3. The first sentence of § 10.9(k), Customs Regulations (19 CFR 10.9(k)), is removed and the following is inserted, in its place.

§ 10.9 Articles exported for processing.

* * * * *

(k) In any case where an imported article was exported for processing without compliance with the registration requirements of this section, the district director, only if satisfied that the returned article is entitled to entry under item 806.30, TSUS, may waive the Customs Form 4455. The importer may establish eligibility for entry under item 806.30, TSUS, by providing sufficient documentation to Customs to prove actual exportation of the article from the U.S., such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill. The district director may require such additional documentation as is deemed necessary as proof of exportation.

* * *

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: August 28, 1985.

DAVID D. QUEEN,

Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, September 26, 1985 (50 FR 38975)]

19 CFR Part 101

(T.D. 85-163)

Changes in the Customs Service Field Organization; San Diego,
California

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document finalizes an interim rule which amended the Customs Regulations to change the Customs Service field organization by extending and redefining the geographical limits of the port of entry of San Diego, California. The changes, which extend the existing port limits to include the new Customs station at Otay Mesa, California, also allow Customs to maintain control of the San Diego port limits since they are currently identified with the city limits of San Diego, National City, and Chula Vista, California. This document also adds San Ysidro, California, to the list of Customs stations.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs is amending §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3, 101.4), by extending and redefining the geographical limits of the port of entry of San Diego, California.

T.D. 54741, published in the Federal Register on December 9, 1958 (23 FR 9508), extended the limits of the port of San Ysidro, California. This extension was the result of an ordinance, adopted by the City Council of San Diego, pursuant to the Annexation Act of 1913 of the State of California, to extend the corporate limits of San Diego by annexing certain additional territory, including the territory within the boundaries of the port of San Ysidro, California. Since the boundaries of a Customs port of entry have been held to coincide with the territory within the corporate limits of

the city or town designated as a Customs port, the port of San Ysidro thus fell within the San Diego port limits.

By T.D. 66-229, published in the Federal Register on October 25, 1966 (31 FR 13721), the port limits of San Diego were further expanded to include the cities of Chula Vista and National City, California, in order to provide for the increasing need for Customs services in this area.

The changes set forth in this document extend the existing San Diego port limits to include the new Customs station on the U.S.-Mexico border at Otay Mesa, California. In addition, specific boundary lines are proposed demarcating the port limits of San Diego. These limits are no longer associated with the corporate limits of the cities of San Diego, National City, and Chula Vista, California.

These changes were published as interim regulation T.D. 85-21 in the Federal Register on January 31, 1985 (50 FR 4504), and public comments were solicited. No comments were received. Accordingly, Customs has determined to adopt the interim regulation as a final rule. This document also adds San Ysidro, California, to the list of Customs stations. Although San Ysidro has been established and operating as a Customs station for many years, it has not been officially listed as such in the Customs Regulations.

CHANGE IN THE CUSTOMS SERVICE FIELD ORGANIZATION

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449), the existing geographical limits of the port of entry of San Diego, California, are extended to include the new Customs station at Otay Mesa, California. Accordingly, the following territory is included within the extension of the port of San Diego:

Beginning at the U.S.-Mexico international boundary at the Pacific Ocean; then north along the Pacific Ocean coastline to Zunia Point (on the southwest corner of the U.S. Naval Air Station at North Island, California); then across the entrance of San Diego Bay to Ballast Point (on the western side of Point Loma); then south on Point Loma to its southern tip; then north along the Pacific Ocean coastline to Township line T13S/T14S; then east along T13S/T14S to where it intersects San Diego County Highway S6; then east and then north along San Diego County Highway S6 to Via Rancho Parkway; then generally in an easterly direction along Via Rancho Parkway to where it meets Bear Valley Parkway; then north on Bear Valley Parkway to San Pasqual Valley Road; then east on San Pasqual Valley Road to Rangeline 1W/2W; then north on Rangeline 1W/2W to where it intersects Township line 13S; then east along Township line 13S to Rangeline 1E/2E; then south

along Rangeline 1E/2E to where it intersects with State Highway 67; then south on State Highway 67 to where it intersects the San Bernardino Meridian; then south on the San Bernardino Meridian to the U.S.-Mexico international boundary; then west on U.S.-Mexico international boundary to where it meets the Pacific Ocean.

Note.—All Rangelines and the Meridian are based on the San Bernardino Baseline and Meridian.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Imports, Organization.

AMENDMENT TO THE REGULATIONS

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows: **AUTHORITY:** 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

2. To reflect these changes, the list of Customs regions, districts, and ports of entry in § 101.3, Customs Regulations (19 CFR 101.3), is amended by removing "T.D. 85-21" under the column headed "Ports of entry" after "San Diego" and inserting, in its place, "(T.D. 85-163)", in the San Diego, California, Customs district in the Pacific Region.

3. To reflect the addition of a new Customs station at Otay Mesa, the list of Customs stations, in § 101.4, Customs Regulations (19 CFR 101.4), is amended by inserting "Otay Mesa, Calif." under "Campo, Calif.", under the column headed "Customs stations" and "San Diego" under the column headed "Port of entry having supervision" in the San Diego, California, Customs district.

4. To reflect the operation of a Customs station at San Ysidro, the list of Customs stations, in § 101.4, Customs Regulations (19 CFR 101.4), is amended by inserting "San Ysidro, Calif." under "Otay Mesa, Calif.", under the column headed "Customs stations" and "San Diego" under the column headed "Ports of entry having supervision" in the San Diego, California, Customs district.

EXECUTIVE ORDER 12291

Because this amendment relates to the organization of the Customs Service, pursuant to § 1(a)(3) of E.O. 12291, it is not subject to that Executive Order.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment. Customs routinely establishes, expands, and consolidates Customs ports of entry through-

out the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although these changes may have a limited effect upon some small entities in the San Diego area, they are not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of § 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service Headquarters. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: August 28, 1985.

DAVID D. QUEEN,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, September 26, 1985 (50 FR 38977)]

19 CFR Part 101

(T.D. 85-164)

Customs Regulations Amendment Relating to a Change in the
Customs Service Field Organization—Hidalgo and Progreso,
Texas

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The document amends the Customs Regulations to change the Customs field organization by extending and redefining the geographical limits of the ports of entry of Hidalgo and Progreso, Texas. The change will enable importers, now operating produce sheds outside the port limits, to apply for a special permit for the immediate delivery for the transportation of fresh fruits and vegetables arriving from Mexico for human consumption.

EFFECTIVE DATE: October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Denise Crawford,
Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), by extending and redefining the geographical limits of the ports of entry of Hidalgo and Progreso, Texas.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations, the ports of Hidalgo and Progreso, Texas, are listed in the Laredo, Texas, Customs District in the Southwest Region. Customs had been requested to extend the geographical limits of both ports so that importers, now operating produce sheds located outside the port limits, will be able to take advantage of the privileges of § 142.21(b), Customs Regulations (19 CFR 142.21(b)). Specifically, § 142.21(b) authorizes the filing of an application with Customs for a special permit for the immediate delivery for the transportation of fresh fruits and vegetables for human consumption arriving from Canada or Mexico to the importer's premises, if within the port of importation.

After a review of the matter, Customs published a notice in the Federal Register on September 5, 1984 (49 FR 35026) proposing expanded port limits for both Hidalgo and Progreso. These proposed boundaries were designed to accommodate all active produce sheds and to simplify the descriptions of the port limits. Customs believes these proposed boundaries will be sufficient to allow all active produce sheds the privilege of operating under § 142.21(b), Customs Regulations, without the need for further expansion in the near future. Customs also believes the existing staffs at both ports will be sufficient to accommodate any additional workload.

DISCUSSION OF COMMENTS

Four comments were received in response to the notice, all in favor of the changes. After a further review of the matter, Customs has determined to adopt the proposal as described in the notice. The list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations, are amended accordingly.

Hidalgo

By E.O. 3609, dated January 9, 1922, and effective February 1, 1922, the port of Hidalgo, Texas, was established. However, the geographic limits of the port were undefined.

Under this amendment the port limits of Hidalgo will include the following territory:

On the south, the Rio Grande River, on the east, FM (Farm to Market)-1423 from the Rio Grande River north to State Highway

107, east on State Highway 107 to FM-493 and north on FM-493 to FM-2812; on the north, FM-2812 west to U.S. Highway 281 then south on U.S. Highway 281 to FM-1925 and west on FM-1925 to FM-881; on the west, south on FM-681 to FM-492 then west on FM-492 to FM-2894; south on FM-2894 to old U.S. Highway 83; west on old U.S. Highway 83 to FM-2062; south on FM-2062 to the Rio Grande River.

Progreso

By T.D. 76-339, published in the Federal Register on December 16, 1976 (41 FR 54927), the geographical limits of Progreso, Texas, included the following territory:

Beginning at the intersection of Mile 9 North Road and the Cameron County and Hidalgo County line proceeding in a westerly direction along Mile 9 North Road to its intersection with Mile 6½ West Road, then proceeding in a southerly direction along Mile 6½ West Road and a continuation thereof to its intersection with the United States-Mexico international boundary to its intersection with the Cameron County and Hidalgo County line, then proceeding in a northerly direction on the Cameron County and Hidalgo County line, to its intersection with Mile 9 North Road.

The amendment will extend the existing port limits of Progreso to include the following territory:

On the south, the Rio Grande River; on the east, the county line separating Hidalgo and Cameron Counties from the Rio Grande River north to State Highway 107; on the north, State Highway 107 west from the county line to FM (Farm to Market)-1423; and on the west, FM-1423 south from State Highway 107 to the Rio Grande River.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Imports, Organization.

AUTHORITY

This change is adopted under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449).

AMENDMENTS TO THE REGULATIONS

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

2. To reflect these changes, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended as follows:

a. By removing "(E.O. 3609, Jan. 9, 1922)." from the column headed "Ports of entry" after "Hidalgo" in the Laredo, Texas, Customs district of the Southwest Region, and inserting, in its place, "T.D. 85-164."

b. By removing "including territory described in T.D. 76-339." from the column headed "Ports of entry" after "Progreso" in the Laredo, Texas, Customs district of the Southwest Region, and inserting, in its place, "T.D. 85-164".

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Hidalgo and Progreso, Texas, areas, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Accordingly, it is certified under the provisions of § 3 of the Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

EXECUTIVE ORDER 12291

Because the amendment relates to the organization of the Customs Service, pursuant to § 1(a)(3) of E.O. 12291 this proposal is not subject to the E.O.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: August 28, 1985.

DAVID D. QUEEN,

Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, September 26, 1985 (50 FR 38978)]

(T.D. 85-165)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued August 2, 1985, to September 5, 1985, inclusive, pursuant to Subpart C, Part 191, Customs Regulations; and 2 approvals under T.D. 84-49.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

Dated: September 19, 1985.

File: 218269.

EDWARD B. GABLE, Jr.,

Director,

Carriers, Drawback and Bonds Division.

(A) Company: Air Products and Chemicals, Inc.

Articles: Monoethylamine

Merchandise: Ethanol, 190 proof; ethanol, 200 proof

Factory: St. Gabriel, LA

Statement signed: April 15, 1985

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to Regional Commissioner of Customs: New York, August 6, 1985

(B) Company: AVCO Corporation, Aerostructures Division

Articles: Aircraft wings (right and left) for the BAe 146 airline program

Merchandise: Aluminum alloy; steel; titanium; copper; brass; bronze; adhesives; nylon; asbestos, phenolic, and plastic sheet; electrical cable wire; bearings, bushings, clamps, seals, springs, couplings, bolts, rivets, studs, and pins

Factory: Nashville, TN

Statement signed: July 19, 1985

Basis of claim: Used in, less valuable waste, for aluminum; otherwise appearing in

Rate forwarded to Regional Commissioner of Customs: New Orleans, September 3, 1985

(C) Company: Ball Corporation

Articles: All zinc indstrip and zinc liners, all zinc, in various widths, lengths and gauges

Merchandise: Zinc slabs, 99% min. purity

Factory: Greeneville, TN

Statement signed: July 10, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York, August 30, 1985

(D) Company: Bristol Alpha Corporation

Articles: Pharmaceuticals in various forms

Merchandise: Ampicillin trihydrate; hetacillin; hetacillin potassium; sodium ampicillin; amoxicillin trihydrate; sodium cephalirin; sodium oxacillin; cepahdroxyl; sodium cloxacillin; sodium methicillin; potassium phenethicillin; sodium dicloxacillin; potassium ampicillin; lysine; ceforanide (with and without lysine); benzathine cephapirin

Factory: Barceloneta, PR

Statement signed: December 20, 1984

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, September 4, 1985

Revokes: T.D. 79-63-E

(E) Company: Chase Instruments Corporation

Articles: Glass culture tubes and glass pasteur pipettes

Merchandise: Glass tubing

Factories: Poultney, VT; Rockwood, TN

Statement signed: March 25, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York, September 4, 1985

(F) Company: Chevron Chemical Company

Articles: Lubricating oil additives

Merchandise: Succinimide molybdenum complex

Factory: Belle Chasse, LA

Statement signed: June 17, 1985

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New Orleans and Los Angeles (San Francisco Liquidation), August 27, 1985

(G) Company: Combibloc, Inc.

Articles: Aseptic package sleeves

Merchandise: Laminated paperboard rollstock

Factory: Columbus, OH

Statement signed: June 3, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Chicago,
September 3, 1985

(H) Company: FMC Corporation

Articles: 7-hydroxy benzofuran, carbofuran insecticides, methyl dimethyl pentenoate, DV methyl esters, Pounce® and Arrivo® products

Merchandise: Ortho-nitro phenol, tri-ethylamine, carbofuran technical and prenil

Factories: As listed in statement

Statement signed: June 12, 1985

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York,
August 5, 1985

Revokes: T.D. 84-154-J

(I) Company: Franklin Plastics Corporation

Articles: Polyvinyl chloride resin products

Merchandise: Polyvinyl chloride resins (low molecular, medium molecular, medium-high molecular, and high molecular); Di (2-ethylhexyl) phthalate

Factory: Kearny, NJ

Statement signed: December 4, 1984

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York,
August 30, 1985

(J) Company: G.E.A. Rainey Corporation

Articles: Heat exchangers and parts thereof

Merchandise: Aluminum tubes

Factory: Tulsa, OK

Statement signed: June 18, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York,
August 30, 1985

(K) Company: General Mills, Inc.

Articles: Fruit roll-ups, fruit bars, and other fruit snacks

Merchandise: Apricot puree, apple puree, pear puree, and orange pulp, washed

Factories: Buffalo, NY; Cedar Rapids, IA; Chicago, IL; West Chicago, IL; Minneapolis, MN; Toledo, OH; Lodi, CA; Flemington, NJ

Statement signed: July 29, 1985

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Chicago,
September 5, 1985
Revokes: T.D. 85-76-K

(L) Company: Hoffmann-LaRoche, Inc.

Articles: Octabase

Merchandise: p-Methoxyphenylacetic acid (PMPA)

Factory: Nutley, NJ

Statement signed: May 6, 1985

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York,
August 6, 1985

(M) Company: ICI Americas, Inc.

Articles: PROCION, DISPERSOL, NYLOMINE, PROCILENE,
MONOLITE

Merchandise: Dye intermediates, per T.D. 72-108(3)

Factory: Dighton, MA

Statement signed: March 2, 1984

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Boston (Bal-
timore Liquidation), August 2, 1985

(N) Company: International Light Metals Corporation

Articles: Titanium bars, billets, pipes, tubes and extrusions

Merchandise: Titanium sponge

Factory: Torrance, CA

Statement signed: July 30, 1985

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Los Angeles
(San Francisco Liquidation), September 3, 1985

(O) Company: Ireco, Inc.

Articles: Cluster bombs

Merchandise: Composition B, type I, grade A per MIL-C-401E

Factory: Pelican Point, UT

Statement signed: April 17, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Chicago,
August 2, 1985

(P) Company: Kay-Fries, Inc.

Articles: Methyl cyanoacetate

Merchandise: Mono-chloroacetic acid

Factory: Stony Point, NY

Statement signed: July 26, 1985

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York,
August 12, 1985

(Q) Company: M&T Chemicals, Inc.

Articles: Tricyclohexyltin hydroxide (TCTH)

Merchandise: Cyclohexylchloride (CyCL); tetrahydrofuran (THF)

Factory: Carrollton, KY

Statement signed: July 17, 1985

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York,
August 30, 1985

(R) Company: National Distillers and Chemical Corporation, Emery
Chemicals Division

Articles: Emery 875, isostearic acid

Merchandise: Undistilled oleic acid based isostearic acid

Factory: Cincinnati, OH

Statement signed: February 5, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Chicago,
September 4, 1985

(S) Company: Nuodex, Inc.

Articles: Plastic sheet and film

Merchandise: Methacrylate/Butadiene styrene thermoplastic
powder; titanium dioxide pigment

Factory: Edison, NJ

Statement signed: January 14, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York,
September 4, 1985

(T) Company: Optical Coating Laboratory, Inc.

Articles: Coated CRT glass panels

Merchandise: CRT glass panels

Factory: Santa Rosa, CA

Statement signed: June 7, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Los Angeles
(San Francisco Liquidation), August 5, 1985

(U) Company: Phifer Wire Products, Inc.

Articles: Nails; drawn wire; coated fiberglass yarn; insect screening

Merchandise: Coiled redraw aluminum alloy rod; fiberglass yarn

Factories: Tuscaloosa, AL (2)

Statement signed: April 23, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New Orleans,
August 8, 1985

(V) Company: Storage Technology Corporation

Articles: Computer tape and disc drives, controllers, printers, memory systems, and spare parts such as motors, read/write heads, cables and printed circuit boards

Merchandise: Ceramic pucks and other computer parts

Factories: Louisville and Broomfield, CO; Ponce, PR

Statement signed: June 7, 1985

Basis of claim: Used in, for ceramic pucks; otherwise, appearing in
Rate forwarded to Regional Commissioner of Customs: Houston, August 6, 1985

(W) Company: Union Carbide Corporation

Articles: Polyethylene resins, film grade, molding grade, and wire and cable grade

Merchandise: Polyethylene feedstock, film grade, molding grade, and wire and cable grade

Factories: Port Lavaca, TX; Rogers, AR; Cartersville, GA; East Hartford, CT; Hahnville, LA

Statement signed: November 12, 1984

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, September 4, 1985

(X) Company: Uniroyal, Inc.

Articles: Polyester tire and belting fabrics; polyester hose yarns; fiberglass tire fabrics; nylon fabrics

Merchandise: Polyester filament yarn; fiberglass filament yarns; nylon filament yarn

Factories: Scottsville, VA; Winnsboro, SC; Hogansville, GA

Statement signed: June 28, 1985

Basis of claim: Used in, less valuable waste

Rate forwarded to Regional Commissioner of Customs: New York, August 30, 1985

(Y) Company: Uniroyal, Inc.

Articles: Bonding agent R-6

Merchandise: Resorcinol

Factory: Naugatuck, CT

Statement signed: May 1, 1985

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York, August 2, 1985

(Z) Company: Warner-Lambert Co.

Articles: Elase chloromycetin ointment 81, elase ointment 79, elase Japan RX ointment 79, and elase vials

Merchandise: Fibrinolysin bovine and fibrinuclease powder

Factory: Rochester, MI

Statement signed: December 6, 1984

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York,
September 3, 1985

Approvals under T.D. 84-49

(1) Company: Champlin Petroleum Company

Articles: Petroleum and petrochemical products

Merchandise: Crude petroleum and petroleum derivatives

Factories: Corpus Christi, TX; Long Beach and Wilmington, CA

Statement signed: May 31, 1985

Basis of claim: As provided in the drawback rate contained in T.D.
84-49

Rate forwarded to Regional Commissioner of Customs: Houston,
August 12, 1985

(2) Company: Phillips Chemical Company

Articles: Neohexene; isobutylene; fuel gas

Merchandise: Diisobutylene; ethylene

Factory: Pasadena, TX

Statement signed: June 26, 1985

Basis of claim: As provided in the drawback rate contained in T.D.
84-49

Rate forwarded to Regional Commissioner of Customs: Chicago,
August 30, 1985

Allied Chemical Corporation, operating under T.D.s 69-74-A, 71-44-M, 72-152-I, and 77-59-A, has changed its name to Allied Corporation

U.S. Customs Service

General Notice

Application for Recordation of Trade Name: "Cryomec, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "CRYOMEC, INC." used by Cryomec, Inc., a corporation organized under the laws of the State of California, located at 1265 North Kraemer Boulevard, Anaheim, California 92806.

The application states that the trade name is used in connection with the following goods, manufactured in the United States: pumps, particularly reciprocating and centrifugal pumps for cryogenic liquids, cryogenic vaporizers, and conversion systems for converting cryogenic liquids to a gas, and related equipment, including heat exchangers.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before November 25, 1985.

ADDRESS: Written comments should be addressed to the Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: September 18, 1985.

STEPHEN PINTER,

Acting Director,

Entry Procedures and Penalties Division.

[Published in the Federal Register, September 25, 1985 (50 FR 38939)]

THE HISTORY OF THE

REPUBLIC OF THE UNITED STATES

OF AMERICA

FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME

BY

JOHN F. JOHNSON

NEW YORK: PUBLISHED BY J. JOHNSON, 15 NASSAU ST. 1850

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Treatment of Hook and Eye Tabs Incorporated in Brassieres

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of several domestic interested parties with respect to the tariff treatment of hook and eye tabs incorporated in imported brassieres. The metal hooks and eyes are manufactured and attached to continuous textile strips in the Philippines, imported into the U.S. duty-free under the Generalized System of Preferences and further processed into individual hook and eye tabs which are then exported and assembled abroad into finished brassieres. The petitioners contend that when the finished brassieres are imported, Customs is incorrectly excluding the value of the hook and eye tabs, and that no allowances should be made for the value of the tabs in the duty assessed on the brassieres because the processing in the U.S. is not sufficient to transform the strips into products of the U.S. This document invites comments with respect to the correctness of the current tariff treatment of the imported articles.

DATE: Comments must be received on or before November 25, 1985.

ADDRESS: Written comments (preferably in triplicate) may be addressed to, and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Frank Foote, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR Part 175), a domestic interested party petition has been filed with Customs concerning the tariff treatment of hook and eye tabs incorporated in imported brassieres. The petitioners are manufacturers and producers of metal hook and eye components which are sewn by machine onto textile strips. These strips are placed on reels and then fed into sealing machines which sever the strips into individual tab units. After heat-sealing, these tab units are ready for incorporation into brassieres.

The imported merchandise is produced using nearly identical methods. However, unlike the domestically-produced merchandise which is produced in one location, the U.S., the imported merchandise is completed in two locations. The textile strips with the hooks and eyes attached are manufactured and produced in the Philippines. These strips are then imported into the U.S. where they are currently classified under the dutiable provision for "Hooks and eyes," in item 745.60, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202). However, these strips are eligible for duty-free treatment under the Generalized System of Preferences (GSP) provided for in Title 5 of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*). The GSP provides that when an eligible article is imported into the customs territory of the U.S. directly from a country, territory or association of countries listed in General Headnote 3(c)(i), TSUS, it shall receive duty-free treatment, unless excluded. These strips of uncut hook and eye tabs are being imported from the Philippines which appears on the GSP list of designated beneficiary developing countries whose articles receive duty-free treatment from the U.S. Accordingly, no duty is paid on these articles when they are imported.

Once in the U.S., these strips of hook and eye tabs are then cut into individual tab units, heat-sealed, then exported and assembled abroad into finished brassieres. The finished brassieres are then imported into the U.S. under the provisions for "Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting * * *," in item 807.00, TSUS. The duty on these articles is based on the full value of the imported article, less the cost or value of any fabricated components which are products of the U.S. In Customs Ruling #053121 M, dated November 7, 1977, Customs

determined that cutting and heat-sealing imported hook and eye strips in the U.S. into individual hook and eye tab units substantially transforms the strips into products of the U.S. Since these completed tabs are considered to be products of the U.S. for purposes of item 807.00, TSUS, their value is excluded from the dutiable value of the imported brassieres.

The petitioners contend that this previous Customs ruling is erroneous. It is their view that hook and eye strips of foreign origin that are imported into the U.S. and merely cut and heat-sealed into individual tabs are not substantially transformed into products of the U.S. Accordingly, they claim that the cost or value of the tabs should not be excluded from the dutiable value of the brassieres imported under item 807.00, TSUS.

COMMENTS

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the classification issue. The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Consitution Avenue, NW., Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

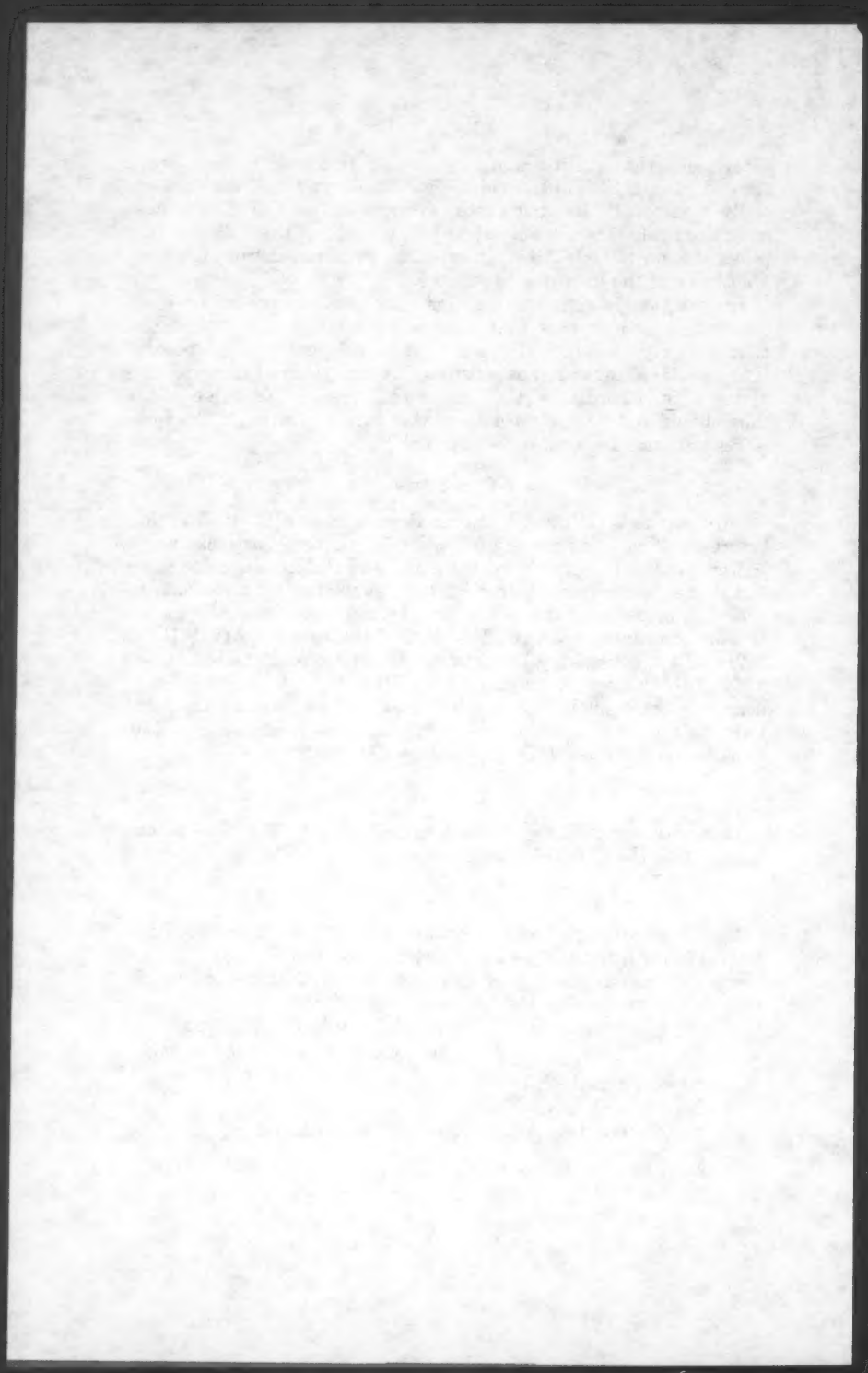
ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: August 28, 1985.

DAVID D. QUEEN,

Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, September 26, 1985 (50 FR 39067)]



United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
James L. Watson
Gregory W. Carman

Jane A. Restani
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Thomas J. Aquilino, Jr.

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Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 85-94)

UNIROYAL, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 78-8-01406

OPINION AND ORDER

[Judgment for plaintiff.]

(Decided September 13, 1985)

Barnes, Richardson & Colburn (Andrew P. Vance and Michael A. Johnson) for plaintiff.

Richard K. Willard, Acting Assistant Attorney General, Joseph I. Liebman, Attorney in Charge, International Trade Field Office, Susan Handler-Menahem, Civil Division, United States Department of Justice, for defendant.

RESTANI, Judge: This case concerns the proper tariff classification of conduit hose imported from Canada. Although this action involves three styles of hose, the basic configuration of all styles are identical and thus all styles are classifiable together either under the assessed or claimed tariff provision.¹ This matter is before the court on plaintiff's motion and defendant's cross-motion for summary judgment.

The subject merchandise was imported into the United States through the port of Champlain-Rouses Point, New York, where it was entered on several occasions between November 12, 1973, and September 12, 1977. The hose was manufactured in Canada by Uniroyal, Ltd. Plaintiff Uniroyal, Inc. is either the consignee or the importer of record. The hose at issue has an exterior surface of either natural or synthetic rubber. Similarly, the surface surrounding the aperture, that is, "the tube," also consists of rubber. In all cases, however, the tube is reinforced with a fabric wrapping to prevent bulging during use.²

¹ Specifically, the three styles of hose at issue here are Uniroyal catalog numbers H-3400 (water discharge hose), P-267 (dredging alleeves), and P-964 (acid suction hose).

² In style P-964 (acid suction hose) the fabric is reinforced with helical-wound wire reinforcement. The parties appear to agree that the wire is irrelevant to classification.

Based solely on the presence of the fabric wrapping, the United States Customs Service (Customs) classified the hose under item 357.90 of the Tariff Schedules of the United States (TSUS)³ as "Hose suitable for conducting gases or liquids, with or without attached fittings: Of vegetable fibers," and assessed duties at the rate of 9.7¢ per pound plus 7.5% *ad valorem*. Plaintiff claims that the hose is properly classifiable under item 772.65 as "Hose, pipe, and tubing, all the foregoing not specially provided for, of rubber, or plastics, suitable for conducting gases or liquids, with or without attached fittings" and dutiable at the rate of 4% *ad valorem*.

The issue presented in this case, therefore, is whether despite its fabric content, the hose should be deemed to be "of rubber" for tariff purposes.⁴ In analyzing this case, in which classification is based on composition, it is useful to examine the process of manufacturing hose.⁵

The construction of hose is known as building.⁶ In hose building, each component is constructed to the desired dimensions before the elements are combined. For large diameter hose, much of the building process is performed by hand, while for hose of smaller diameter, construction is performed by machine as well as by hand. In either case, the tube is manufactured and then placed on a length of rigid or flexible rod known as a mandrel where it remains until the finished product is created.⁷

After the tube is mounted on the mandrel the fabric reinforcement, known as the "carcass," is wrapped around the tube.⁸ Before it is applied, however, the cloth is impregnated with rubber in a process known as "frictioning." Frictioning removes air, fills the interstices of the fabric, and provides an adhesive base for the tube, fabric, and cover layers. After frictioning, a thin layer of rubber, known as a "skim coating," is then added to the fabric. The skim coating completely covers the fabric and prevents the fabric from chaffing and degrading if it rubs between the tube and the outer surface of the hose. After the carcass is in place, the outer surface, the "cover," is wrapped over it. The inner surface of the cover directly contacts the skim coating of the carcass. The addition of the cover completes the building process.

³ Although the entries involved in the subject protest occurred between 1973 and 1977, the relevant TSUS provisions remained unchanged throughout this period.

⁴ Under general headnote 9(II) of the TSUS, for purposes of items classified by composition, the word "of" means "wholly or in chief value of the named material." The court's use of the word "rubber" includes synthetic rubber.

⁵ This process is described in the affidavit of plaintiff's engineer, Gordon Grant. The facts stated in the affidavit are not challenged by defendant.

⁶ "Building operations, varying from simple to complex, are [also] required for products such as tires, shoes, fuel cells, press rolls, conveyor belts, and life rafts. These products may be built by combining stocks of different compositions or by combining rubber stocks with other construction materials such as textile cords, woven fabric or metal." 11 *McGraw-Hill Encyclopedia of Science & Technology* 767 (5th ed. 1982).

⁷ In style number P-964 (acid suction hose) the tube consists of the synthetic rubber compound Hypalon. In style number H-3400 (water discharge hose) the tube is formed from the synthetic compound styrene butadiene rubber while in style P-267 (dredging sleeves) the tube is made of abrasion-resistant rubber.

⁸ The fabric carcass can consist of either natural or synthetic fibers depending upon the respective specification. For instance, the carcass of style number P-267 (dredging sleeves) is made of multiple plies of synthetic fabric.

Once built, the hose is vulcanized. Vulcanization is a process in which the hose is heated under pressure in the presence of a catalyst.⁹ During vulcanization all rubber components join to one another in a process of lamination. Each of the rubber layers are thus irreversibly combined in such a manner that they cannot be peeled apart.

Plaintiff bases its claim on headnote 5 of schedule 3, "Textile Fibers and Textile Products," of the TSUS which states:

For the purposes of parts 5, 6, and 7 of this schedule and parts 1 (except subpart A), 4, and 12 of schedule 7, in determining the classification of any article which is wholly or in part of a fabric coated or filled, or laminated, with nontransparent rubber or plastics (which fabric is provided for in part 4C of this schedule), the fabric shall be regarded not as a textile material but as being wholly of rubber or plastics to the extent that (as used in the article) the nontransparent rubber or plastics forms either the outer surface of such article or the only exposed surface of such fabric.¹⁰

Plaintiff argues that the cover of the hose as laminated to the fabric's skim coating places the hose at issue within the purview of headnote 5, thereby permitting the hose to be classified as rubber hose under schedule 7, part 12, "Rubber and Plastics Products."

Defendant claims that headnote 5 is inapplicable. To defendant, the purview of headnote 5 is limited by its own terms to specifically enumerated TSUS sections (e.g., schedule 3, parts 5, 6, and 7 and schedule 7, parts 1, 4, and 12). Since Customs' classification, that is, hose of "vegetable fiber" is in part 4 of schedule 3 and is not within the specifically enumerated areas of the TSUS, the government argues that headnote 5 is inapplicable. There is a logical flaw in defendant's approach. Defendant would first choose a specific item of the TSUS and then look for applicable headnotes. In this case the headnote determines whether or not a specific item of the TSUS will fit the merchandise. Defendant has proceeded erroneously in choosing a specific TSUS item in the first instance, thereby causing the headnote to appear inapplicable, when in fact it is the key to classification here.

Further, defendant's assertion that headnote 4(b) of schedule 3 governs this case is not persuasive. Defendant incorrectly interprets the provision as applying to a determination of whether the component of chief value is fiber or rubber.¹¹ Headnote 4(b), how-

⁹ "Vulcanization is the process that converts the essentially plastic, raw rubber mixture to an elastic state. It is normally accomplished by applying heat for a specified time at the desired level." 11 *McGraw-Hill Encyclopedia of Science and Technology* 767 (5th ed. 1982). The process is accomplished through "[a] physicochemical change resulting from cross-linking of the unsaturated hydrocarbon chain of polyisoprene (rubber) with sulfur" . . . *Hawley's Condensed Chemical Dictionary* 1091 (10th ed. 1981).

¹⁰ Headnote 2(a) to schedule 3 of the TSUS is consistent in that it indicates that articles made from the coated or laminated fabrics described in headnote 5 are not textile materials.

¹¹ Headnote 4(b) of schedule 3 provides:

In determining the component fibers of chief value in coated or filled, or laminated, fabrics and articles wholly or in part thereof, the coating or filling, or the nontextile laminating substances, shall be disregarded in the absence of context to the contrary.

ever, directs that in determining the component *fiber* in chief value the coating, filling or laminating substance is to be disregarded. The headnote thus refers only to the situation in which a choice must be made among several fibers. "The headnote is no indication that [coating, filling, or laminating substances] should be disregarded for other purposes." *Marshall Co. v. United States*, 67 Cust. Ct. 316, 323, C.D. 4291 (1971) (citing *Briarcliff Clothes, Ltd. v. United States*, 66 Cust. Ct. 228, C.D. 4194 (1971)). Despite such precedent, defendant claims that headnote 4(b) may be interpreted expansively, citing *C. Itoh & Co. America v. United States*, 1 CIT 223, 230, 520 F. Supp. 273, 278 (1981), *aff'd*, 69 CCPA 147, 678 F. 2d 218 (1982). In that case, the trial court made reference to headnote 4(b) in deciding to disregard rubber coating in classifying a material called Ultrasuede. Headnote 4(b) was used, however, only with reference to classification within schedule 3. This is consistent with *Marshall* and *Briarcliff*.

Defendant also argues that the cotton carcass is not coated or laminated by the rubber cover because the fabric itself is coated with rubber before the cover is wrapped around the carcass. Defendant claims that the rubber cover which forms the outer surface of the hose does not coat the fabric but instead coats the fabric's previous rubber layer and is, therefore, not in accordance with headnote 5. Through the process of vulcanization, however, the rubber layers between the tube and carcass are united. In final form, the carcass is covered by a single layer of nontransparent rubber.¹²

Finally, the government argues that headnote 5 does not apply because the hose is not an "article" at the time the component material of chief value must be determined. That argument disregards the purpose of headnote 5. Headnote 5 allows the fabric content of certain articles to be ignored. Accordingly, since the entire hose is considered to be made of rubber under headnote 5, no chief value ascertainment need be made, and the point in assembly at which chief value is determined is irrelevant.

Plaintiff's claimed classification is also supported by legislative history. Congress apparently intended that an article containing fabric, but with the essential characteristics of rubber or plastic, be treated as being rubber or plastic. See S. Rep. No. 530, 89th Cong., 1st Sess. 26, reprinted in 1965 U.S. Code Cong. & Ad. News 3416, 3440; H.R. Rep. No. 342, 89th Cong., 1st Sess. 10-13 (1965). Specifically, the reports note that if the outer surface of the article is non-transparent rubber, the article will be treated as one made of rubber. The court has examined the sample articles in this case.

¹² While not dispositive, it is interesting to note that imported Canadian hose of manufacture similar to the merchandise here and containing a fabric reinforcement layer was the subject of *John V. Carr & Son, Inc. v. United States*, 76 Cust. Ct. 162, C.D. 4652, 414 F. Supp. 620 (1976). The issue in the *Carr* case concerned whether the imported hose should have received duty free treatment under item 772.66 of the TSUS. Upon entry, Customs had classified the hose under item 772.65. Despite the reinforcing fabric, Customs made no use of item 357.90.

Except for certain dissection which was performed for litigation purposes, the fabric would not be apparent upon inspection inasmuch as the surface of the hose is covered by nontransparent rubber. Essentially, the product at issue is rubber hose.

Accordingly, plaintiff has overcome the presumption of correctness in defendant's favor. See *Jarvis Clark Co. v. United States*, 733 F. 2d 873, 876, *reh'g denied*, 739 F. 2d 628 (Fed. Cir. 1984). Plaintiff's motion for summary judgment is granted and defendant's cross-motion is denied. Customs is directed to reclassify the subject merchandise under item 772.65 and make refunds as appropriate, together with any interest as provided by law.

(Slip Op. 85-95)

UNITED STATES STEEL CORP., PLAINTIFF *v.* UNITED STATES, ET AL.,
DEFENDANTS

Court No. 85-07-00954

OPINION AND ORDER

[Defendant's motion for summary judgment granted, plaintiff's cross-motion for summary judgment denied.]

(Decided September 16, 1985)

Law Department of United States Steel Corporation (J. Michael Jarboe) for plaintiff.

Richard K. Willard, Acting Assistant Attorney General, David M. Cohen, Director, Commercial Litigation Branch, and Platte B. Moring, III, Civil Division, United States Department of Justice, for defendants.

Hale, Russel & Gray (Louis H. Kurrelmeyer) for intervenor.

RESTANI, *Judge*: This matter is now before the court on defendant's motion and plaintiff's cross-motion for summary judgment. At issue is the interpretation placed on § 606 of the Trade and Tariff Act of 1984 by the International Trade Administration of the United States Department of Commerce (ITA). Section 606 allows a party to request that a final determination in a countervailing duty case not be issued until the issuance of a related antidumping duty determination. The purpose of § 606 is to allow hearings on injury to be consolidated before the International Trade Commission (ITC). See Cong. Rep. No. 1156, 98th Cong., 2d Sess. 175-176, reprinted in 1984 U.S. Code Cong. and Ad. News 5220, 5292-93. Section 606 is silent, however, as to the duration of the provisional remedy of suspension of liquidation in countervailing duty cases in which a postponement of the final determination is requested. Plaintiff claims that § 606 mandates that suspension continue until publication of the final determination. In contrast, the government defendant argues that the ITA properly concluded that Congress intended that it remain faithful to the Subsidies Code of the General Agreement on Tariffs and Trade (GATT), 31 U.S.T. 513, T.I.A.S.

9619, 55 U.N.T.S. 194, by terminating suspension of liquidation in a countervailing duty proceeding after 120 days.¹

I

The facts of this case are not in dispute. On December 19, 1984, plaintiff, United States Steel Corporation (USS), filed countervailing duty petitions with the ITA and ITC with regard to certain carbon steel products from Sweden and Austria. On the same day USS also filed antidumping petitions against the Austrian product. The ITA published preliminary affirmative determinations in both countervailing duty investigations on March 20, 1985. 50 Fed. Reg. 11,220, 11,224 (1985). Liquidation was suspended on that date pursuant to § 703 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1671b(d)(1) (1982). The next day, plaintiff made its postponement request for its countervailing duty cases under § 606 of the Trade and Tariff Act of 1984, 19 U.S.C.A. § 1671d(a)(1) (West Supp. 1985). The ITA granted the § 606 extension with the expected date of the final antidumping determination being September 26, 1985. On July 18, 1985, however, the ITA, fearing that continuation of suspension would violate GATT, directed the Customs Service to terminate the suspension and begin liquidation. On July 19, 1985, this court granted a temporary restraining order preventing termination of suspension. That order was dissolved upon the court's denial of plaintiff's motion for a preliminary injunction. *United States Steel Corp. v. United States*, 9 CIT —, Slip Op. 85-75 (July 30, 1985). An expedited briefing schedule was issued with respect to the motions now before the court.

II

USS claims that § 606 is clear and unambiguous in meaning, intent, and application. Plainly on the face of the statute, however, this is not so. The statute provides in full:

Within 75 days after the date of [its] preliminary determination under section 1671b(b) of this title, the administering authority shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise; except that when an investigation under this part is initiated simultaneously with an investigation under part II [antidumping], which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under part II.

¹ The Agreement of Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (commonly known as the GATT Subsidies Code), 31 U.S.T. 513, T.I.A.S. 9619, 55 U.N.T.S. 194, provides in part 3 of article 5: "The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months."

19 U.S.C.A. § 1671d(a)(1) (West Supp. 1985). There simply is no language contained in the provision referring to suspension of liquidation, much less indicating the duration of any suspension.

Plaintiff argues that § 606 was designed to conform to an existing body of countervailing duty law which mandates suspension of liquidation between an affirmative preliminary ITA determination and the final finding in the case. More specifically, plaintiff seeks to draw support from § 703(d) of the Trade and Tariff Act of 1930, as amended, 19 U.S.C. § 1671b(d)(1) (1982), which compels suspension of liquidation upon a preliminary affirmative determination.² Plaintiff stresses that the legislative history of § 703(d) notes that "[t]he requirement that liquidation be suspended upon an affirmative preliminary determination is intended to preserve the status quo during the remainder of the investigation." S. Rep. No. 249, 96th Cong., 1st Sess. 50, *reprinted in* 1979 U.S. Code Cong. & Ad. News 381, 436. Plaintiff argues that in drafting § 606 Congress intended to maintain suspension of liquidation regardless of the duration of time between the preliminary ITA determination and the final determination in the case.

Plaintiff's view that Congress' desire to maintain the status quo overrides other considerations is not persuasive in light of an examination of all relevant countervailing duty provisions. First, § 703(d) merely states when suspension of liquidation must commence. It does not specify when suspension of liquidation must terminate. Second, that the time for termination is after the expiration of the 120 day period may be determined from a review of the entire statutory framework.

The provision controlling the date of the Commission's final determination after the ITA issues a preliminary affirmative finding is § 705 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1671d (1982). Section 705(b)(2) calls for a final ITC determination within 120 days after the date the ITA makes a preliminary affirmative finding. Although the legislative history of § 705 does not specifically mention a reason for the 120 day limit, the statute itself and the general legislative history of § 705 are evidence that § 705 was enacted to be GATT consistent. As the legislative history of § 705 states: "After an affirmative preliminary determination in a countervailing duty investigation, Article 2(4) of the Agreement requires simultaneous consideration of whether a subsidy and injury exist. Section 705 would implement this requirement for the United States." S. Rep. No. 249, 96th Cong., 1st Sess. 57, *reprinted in* 1979 U.S. Code Cong. & Ad. News 381, 443.³ Furthermore,

² 19 U.S.C. § 1671b(d)(1) (1982) provides:

If the preliminary determination of the administering authority under subsection (b) of this section is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register.

³ Section 703 was also intended to be GATT consistent. The legislative history of § 703(a), as embodied in the Senate Report states:

§ 705(b)(2) provides, alternatively, that the ITC's final decision may be made within 45 days of the ITA's final determination. This, together with the 75 day period provided in § 606 for non-extended cases equals 120 days. Obviously Congress intended to design the statute to adhere to the 120 day limit for provisional remedies. In sum, there is nothing on the face of the provisions implementing the initiation and duration of countervailing duty proceedings, nor in the legislative history of those provisions, which compels the conclusion that absent critical circumstances,⁴ Congress intended that a provisional suspension last longer than 120 days.

Plaintiff next calls the court's attention to § 613 of the Trade and Tariff Act of 1984, 19 U.S.C.A. § 1671b(h) (West Supp. 1985). Section 613 concerns upstream subsidy cases. The section extends the time period in which a final determination is to be made to 165 days after a preliminary finding, while explicitly limiting suspension of liquidation to the 120 day time period after the preliminary determination. Plaintiff contends that § 613 is an example of a situation in which Congress explicitly limited suspension of liquidation to 120 days, although time for the final determination may be extended beyond the four month period. Plaintiff argues that § 613 supports the proposition that had Congress intended to limit suspension of liquidation under § 606, the legislature would have made the limit explicit. Therefore, continues plaintiff, the absence of a 120 day limit in § 606 should not be deemed unintentional. See *Kentucky ex rel. Hancock v. Ruckelshaus*, 362 F. Supp. 360, 365 (W.D. Ky 1973), *aff'd*, 497 F. 2d 1172 (6th Cir. 1974), *aff'd sub nom, Hancock v. Train*, 426 U.S. 167 (1976) ("[W]here a particular provision appears in a statute, the failure to include that same requirement in another section of the statute will not be deemed to have been inadvertent."); see also *Dunlop v. First National Bank of Arizona*, 399 F. Supp. 855, 856 (D. Ariz. 1975).⁵

While the maxim of construction which plaintiff attempts to invoke has "particular vitality when applied to carefully constructed and intertwined statutory provisions such as those found in [the

Before a countervailing duty investigation is initiated, Article 2(4) of the Agreement requires consideration whether both a subsidy and injury exist. The petition determination by the authority under section 702(c) and the determination by the ITC under section 703(a) will implement that requirement for the United States.

S. Rep. No. 249, 96th Cong., 1st Sess. 49, reprinted in 1979 U.S. Code Cong. & Ad. News 381, 435.

⁴ Under 19 U.S.C. § 1671b(c)(2) (1982), when the ITA finds "critical circumstances" it is permitted to order suspension of liquidation of subject merchandise entered on or after the date ninety days before suspension was first ordered. This would, of course, extend the provisional remedy of suspension to a duration of 210 days. Such ninety day extension, however, is expressly authorized in the GATT Subsidies code at article 5 part 9.

⁵ Further seeking to demonstrate that there was no inadvertence on the part of Congress in enacting § 606, plaintiff directs the court's attention to two letters. The first letter was written by plaintiff's own general counsel to the Department of Commerce and discusses efforts to obtain a version of § 606 satisfactory to plaintiff. The first letter was written by the spokesman of a lobbying group to the Department of Commerce and describes the group's discussions with legislators concerning GATT and § 606. Like the first letter, Senator Heinz's letter was written after § 606 was enacted. Plaintiff asserts that it offers the letters not to demonstrate the legislative intent regarding suspension of liquidation under § 606, but merely to demonstrate that the suspension issue was not inadvertently overlooked. Plaintiff's argument here, even as to the issue of inadvertence, goes to legislative intent. Such post enactment statements, even those by the author of the legislation, cannot be considered by the court, because the statements cannot demonstrate intent at the time of passage. See *Selman v. United States*, 204 Ct. Cl. 675, 685 n.6, 498 F.2d 1354, 1359 n.6 (1974); "[N]o member of the legislature, outside of the legislature, is empowered to speak with authority for the body".

Tariff Schedules],” *Algoma Tube Corp. v. United States*, 9 CIT —, Slip Op. 85-89 at 9 (August 28, 1985), it has minimal value in the context of the constantly developing law of unfair international trade practices. The United States’ countervailing duty law was restructured by the Trade and Tariff Act of 1979 and amended again by 1984 legislation in an attempt to cure developing problems. See H.R. Rep. No. 725, 98th Cong., 2nd Sess; see also Holmer & Bello, *The Trade and Tariff Act of 1984: The Road to Enactment*, 19 Int’l Law. 287, 291 (1985). The two Trade Acts and their various provisions do not fit together in detail to the same degree as various items within a particular Tariff Schedule. Plaintiff’s contextual analysis is therefore not a dispositive guide as to the interpretation of § 606.

Furthermore, “[i]n determining the purpose of legislation, it is appropriate to consider not only the effect of the legislation itself, but also the history and setting out of which the legislation arose.” *Turner v. Littleton-Lake Gaston School District*, 442 F.2d 584, 587 (4th Cir. 1971). Section 606 is part of a group of provisions of the Trade and Tariff Act of 1984 designed to aid small businesses. See Holmer & Bello, *The Trade and Tariff Act of 1984: Principal Anti-dumping and Countervailing Duty Provisions*, 19 Int’l Law. 639, 645-658 (1985). “One of the enduring themes in the hearings that led up to the 1984 Act was the stated desire to simplify and streamline the administration of the [trade] laws, making them more accessible to small businesses.” *Id.* 645. The only clearly intended purpose of the statute appears to be to allow all parties to conserve costs by utilizing one consolidated hearing covering related countervailing duty and antidumping injury proceedings instead of two separate agency adjudications. H. Conf. Rep. No. 1156, 98th Cong., 2d Sess. 175-76, reprinted in, 1984 U.S. Code Cong. & Ad. News 5220, 5292-93.

Plaintiff argues that a 120 day limit on suspension would render § 606 meaningless because a petitioner would not seek an extension if suspension could terminate before final determination is reached. Although some entries may be liquidated if provisional suspension is terminated after 120 days, it is not clear that every petitioner would find the administrative benefits of § 606 to be outweighed by the detriment of the gap in suspension of liquidation.

Moreover, despite the scarcity of legislative history specifically concerning § 606, the overall intent of Congress to adhere to GATT in enacting the 1984 legislation is quite clear. Although the Trade Agreements Act of 1979 did not constitute either Congressional approval or disapproval of the GATT Subsidies Code, S. Rep. No. 249, 96th Cong., 1st Sess. 38-39 (1979), the objective of GATT consistency was embodied in the Act. See Statement of Administrative Action for the Trade Agreements Act of 1979, H. Doc. No. 96-153, 96th Cong., 1st Sess. 2-6 (1979), reprinted in 1979 U.S. Code Cong. & Ad. News 665, 666-68. Similarly, conformity with GATT was an un-

derlying principal in the Trade and Tariff Act of 1984. As the House Report stated:

[A] basic criterion guiding the Committee in including amendments of these laws in the bill was to maintain their consistency with the letter and spirit of the General Agreement on Tariffs and Trade (GATT), particularly with Articles VI and XVI, which govern the use of these remedies, and the Agreement on Antidumping Measures and the Agreement on Subsidies and Countervailing Measures negotiated under the auspices of the GATT and signed by the United States in 1979.

H.R. Rep. No. 725, 98th Cong., 2nd Sess. 5 (1984), reprinted in 1984 U.S. Code Cong. & Ad News 5127, 5131. See also S. Rep. 249, 96th Cong. 1st Sess. 38 (1979) ("The revisions are all consistent with the [GATT] agreements * * *").

Plaintiff, however, argues that this case presents just one example of several situations in which Congress deliberately did not follow the GATT Subsidy Code in promulgating the domestic countervailing duty law. To support that position, plaintiff cites, in particular, article 5, clause 1 of the Subsidy Code which states that "[p]rovisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation." 31 U.S.T. 513, T.I.A.S. 6919, 55 U.N.T.S. 194. Plaintiff claims that no such provision is contained in the domestic law. Citing *Republic Steel Corp. v. United States*, 8 CIT —, 591 F. Supp. 640, 646 (1984), plaintiff asserts that the standard embodied in the Subsidies Code for determination of injury at the preliminary stage is stricter than that contained in the domestic law. Plaintiff's example, however, provides no direct evidence that Congress has ever intentionally decided to violate GATT. Instead, plaintiff merely raises a question of interpretation of the language of GATT. Although Congress chooses language which differs from the often broad language of GATT, the legislature's choice of words is its attempt to implement in a concrete and specific manner its view of the obligations of the United States stemming from the international trade agreements. This was explained in the Senate Report which stated:

The committee is aware that some major trading partners are concerned that particular elements of this bill do not repeat the precise language of the agreements. This bill is drafted with the intent to permit U.S. practice to be consistent with the obligations of the agreements, as the United States understands those obligations. The bill implements the United States understanding of those obligations.

Our trade laws are, and long have been, subject to administrative and judicial review processes. These processes both lead to and require greater precision in our law than the often vague terms of the agreements or implementing regulations of other countries. Furthermore, unfamiliar terms in the agreements, or terms which may have a different meaning in

United States law than in international practice or another country's laws, need to be rendered into United States law in a way which ensures maximum predictability and fairness.

S. Rep. No. 249, 96th Cong., 1st Sess. 36 (1979). Thus, it appears that Congress would not use inaction or implication in varying domestic countervailing duty law from that envisioned by GATT.⁶ The statute at issue, which is silent regarding the length of provisional suspension, should not be interpreted by means of tenuous argument to yield a construction which would be in contravention of GATT.

Furthermore, "[c]aution must temper judicial creativity in the face of legislative * * * silence." *Ford Motor Credit Co. v. Milholin*, 444 U.S. 555, 565 (1980). In the wake of that silence, the interpretation of the agency charged with administering a statute is entitled to substantial deference. *Blum v. Bacon*, 457 U.S. 132, 141 (1982). Deference is appropriate especially when "the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'" *Frontier Airlines, Inc. v. CAB*, 621 F.2d 369, 372 (10th Cir. 1980) (quoting *Power Reactor Development Co. v. Electricians*, 367 U.S. 396, 408 (1961) quoting *Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 315 (1933)).

The interpretation of the ITA, the agency charged with implementing § 606 must be afforded great weight. Not only did the ITA conform to the GATT 120 day limit in the case at bar by its actions of July 18, 1985, but it has reduced that interpretation to proposed regulations published on June 10, 1985 at 50 Fed. Reg. 24,207.⁷ Although the new regulation is still in the rulemaking process, it obviously reflects the view of the agency. See *First Multifund For Daily Income, Inc. v. United States*, 221 Ct. Cl. 123, 130-31, 602 F.2d 332, 337 (1967), cert. denied, 445 U.S. 916 (1980) ("The form in which an agency manifests its interpretation of a statute it administers is immaterial; the critical thing is whether there is such an interpretation and how settled it has become".)

The action by the ITA terminating the provisional suspension of liquidation is in harmony with Congress' general intent to make domestic law consistent with GATT, and there is no indication of specific intent to vary here from Congress' general purpose. Accordingly, plaintiff's cross-motion for summary judgment is denied,

⁶ Plaintiff seems to have retreated somewhat from its previous concession that its interpretation of § 606 is not GATT consistent. Plaintiff's interpretation, if not an absolute violation of GATT, is close enough so that Congress would have discussed it, if it had been intended.

⁷ The proposed regulation for § 606 states that if a countervailing duty proceeding is postponed under the statute for the duration of a simultaneous antidumping case, the Secretary of Commerce will:

End any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and not resume it unless the ITC publishes a final affirmative determination, or, if the merchandise is from a country not entitled to an injury test for the merchandise, the Secretary publishes a countervailing duty order.

50 Fed. Reg. 24,225 (1985).

defendant's motion for summary judgment is granted, and this case is hereby dismissed.

(Slip Op. 85-96)

THE MAINE POTATO COUNCIL, PLAINTIFF V. UNITED STATES,
DEFENDANT

Court No. 84-1-00141

OPINION AND ORDER

[Final negative antidumping determination of United States International Trade Commission sustained.]

(Decided September 17, 1985)

Heron, Burchette, Ruckert & Rothwell (Thomas A. Rothwell, Jr., James M. Lyons and Alfred G. Scholle) for plaintiff.

Lyn M. Schlitt, General Counsel, *Michael P. Mabile*, Assistant General Counsel, United States International Trade Commission (*Stephen A. McLaughlin*), for defendant.

RESTANI, *Judge*: Plaintiff, the Maine Potato Council, challenges as unsupported by substantial evidence and otherwise not in accordance with the law, the final negative injury determination by the United States International Trade Commission (ITC or Commission) involving imports of fall-harvested round white potatoes from Canada. See *Fall-Harvested Round White Potatoes from Canada*, 48 Fed. Reg. 57,381 (Inv. No. 731-TA-124 (Final), USITC Pub. No. 1463) (Dec. 29, 1983). On June 27, 1985, this court remanded certain issues to the ITC for further consideration. *Maine Potato Council v. United States*, 9 CIT —, Slip Op. 85-69 (June 27, 1985). Specifically, the Commission was instructed to: (1) explain how it treated the issue of quality differences between Canadian and Maine potatoes in finding no price suppression by reason of the imported potatoes and no underselling and how such findings led to the final decision regarding injury, and (2) to state whether it finds that imports were a contributing cause of injury and how that finding relates to data on volume effects. The Commission subsequently reconsidered these issues in light of all the information of record and submitted additional findings to the court on July 25, 1985.¹

For the following reasons, the court concludes that there is substantial evidence in the administrative record supporting the ITC's negative injury determination and that the determination is otherwise in accordance with the law.

First, it is the view of the court that where the Commission finds quality differences significant, it must account for such differences in its analysis. Nonetheless, the Commission persists in its view

¹ The separately stated views of one commissioner which do not treat the remanded factual issues will not be addressed.

that perceived quality differences need never be quantified and cites as support *British Steel Corp. v. United States*, 8 CIT —, 593 F. Supp. 405, 412 (1984). Plaintiffs in *British Steel* sought reversal of a finding of underselling, maintaining that costs associated with long lead times for deliveries of the imports offset the lower price of British steel. The court held that an adjustment to actual selling price for those particular cost factors was inappropriate largely because the costs varied according to numerous factors. *British Steel*, 593 F. Supp. at 412. Thus, *British Steel* did not involve quality differences, let alone consistently significant quality differences, and the discussion of costs related to underselling only, not to price suppression.

With the legal standard previously set forth in mind, the court must analyze the Commission's actions here. The Commission states that it did make allowances for quality differences in drawing its conclusions regarding price suppression and underselling, although it did not quantify the differences. Therefore, the remaining issue as to quality is whether the differences must be quantified in this case. Initially, it should be noted that no one has proposed a methodology for quantification here. Although the Commission's counsel once stated that quantification was possible, the Commission now states that quantification would be speculative because prices and margins of underselling fluctuate greatly and because the quality differences under discussion reflect consumer preferences only. These reasons are not highly persuasive. Fluctuations make quantification difficult, not impossible, and there remains the possibility that consumer perception influenced the price of potatoes throughout the chain of sale, as some of the lost sales questionnaire responses seem to indicate. The court concludes, however, that quantification is not necessary, in this instance, for other reasons noted by the Commission. The Commission indicates that there was a wide fluctuation in margins of overselling, which the Commission believes is incompatible with plaintiff's theory that consistent quality differences created a ceiling effect on prices. The Commission also indicates that it did not, in fact, find that consistent external quality differences were a significant factor here. Rather, the Commission found these quality differences to be marginal. Such views are not inconsistent with the evidence. Although some witnesses indicated Prince Edward Island potatoes were externally of superior quality, not all lost sales questionnaires reflect this view. Furthermore, those questionnaire respondents who expressed views on quality were not consistent as to which external quality factors—tint, uniform size, or lack of external defects—existed.² This data and the data on the margins of overselling indicates that the Commission did not proceed in an unlawful manner in failing to quantify the perceived external quality differences.

² New Brunswick potatoes may also have benefited from more uniform grading requirements.

Second, the Commission has now clarified that it does not find the Canadian imports to be any contributing part of the cause of material injury to the domestic industry. In connection with this finding, the court asked for the Commission's view on volume effects on prices in general and specifically in connection with the Commission's econometric study. This study covered a twenty-five year period and indicated that there was a significant inverse correlation between domestic production and prices throughout that period. The study also showed an inverse correlation between imports and prices. The latter correlation, however, was not found to be significant with a certainty of 95 percent. Although neither courts nor administrative agencies need require the degree of certainty, this is often what statisticians require in order to find a significant correlation. See *Ethyl Corp. v. Environmental Protection Agency*, 541, F.2d 1, 28 & n. 58 (D.C. Cir. 1976); see also M. Hamburg, *Statistical Analysis for Decision Making* at 265 (2d ed. 1977). The Commission is not required to accept data which in the course of ordinary scientific research could properly be rejected.³ Although one might draw a conclusion from the econometric study which supports plaintiff's view, the finding of the Commission that the study did not support a finding of material injury by reason of the imports may also be rationally drawn.⁴ Consequently, the econometric study alone does not undermine the Commission's conclusion that the volume of imports did not contribute to injury.⁵

Third, plaintiff again argues that the following conclusions are not supported by substantial evidence in the record: that financial losses by the domestic industry were greatest when the volume of imports was lowest and domestic production has highest; that high import penetration coincided with high prices and low domestic supply; and that price trends outside the northeast region were parallel with price trends within the region. Plaintiff points to evidence in the record, specifically, the Commission's focus on price movements rather than on absolute prices and its comparisons of crop years with fiscal or calendar years, which plaintiff argues demonstrates that the above conclusions are flawed, misleading or inaccurate. These arguments were not persuasive prior to remand and they are not persuasive now.

In reviewing an injury determination by the ITC, the "court may not substitute its judgment for that of the [agency] when the choice

³ The Commission stated that the study shows that the price effect of the imports was *de minimis* or "not very great." The court understands the Commission to say that the study did not show any significant correlation between imports and prices.

⁴ The parties disagree as to whether econometric research focusing on the three years under study would have supported plaintiff. The Commission, however, is not required to do any particular type of study and plaintiff did not submit any such study as part of the evidence before the Commission.

⁵ While plaintiff's argument that a certain increase in the volume of supply, regardless of the source, will lead to lower price appeals to logic, plaintiff submitted no data to demonstrate this hypothesis. The econometric study was not designed to prove or disprove any correlation between overall supply and price and the court can think of several factors which might prevent any significant correlation between these variables. In any case, the court is not willing to disregard the expert opinion of the agency with regard to causation without data demonstrating that substantial evidence is lacking.

is 'between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo* * * *.' *American Spring Wire Corp. v. United States*, 8 CIT —, 590 F. Supp. 1273, 1276 (1984) (quoting *Pennotech Papers, Inc. v. NLRB*, 706 F.2d 18, 22-23 (1st Cir.), cert denied, 464 U.S. 892 (1983) (quoting *Universal Camera Corp.*, 340 U.S. 474, 488 (1951))), *aff'd sub nom. Armco, Inc. v. United States*, No 84-1715 (Fed. Cir. May 2, 1985). It is within the Commission's discretion to make reasonable interpretations of the evidence and to determine the overall significance of any particular factor or piece of evidence. See S. Rep. 249, 96th Cong., 1st Sess. at 74-75 (1979). The tables referred to by the Commission are problematic to the extent that comparisons are made between data collected during calendar years and data collected during crop years. However, adjusting the tables to compensate for the inconsistency in form, the court finds that the Commission could conclude that farm losses and price declines did not correlate with increases in import volume and market penetration. See the discussion of these findings in the court's previous opinion, *Maine Potato Council v. United States*, Slip Op. 85-69 at 5-6.⁶ Likewise, it was not inappropriate for the Commission to rely on price movements, rather than on absolute prices, in concluding that price effects outside the region where imports primarily competed were parallel to price effects within the region. Transportation costs may indeed affect the absolute level of prices. Again, the Commission's findings in these areas were not unreasonable.

Finally, the court is disturbed that both the words of the Commission's original opinion and the words of its opinion upon remand were imprecise in their description of technical information and in regard to the law which is applicable to this case. Beyond additional demand upon legal and judicial resources, such imprecision gives the appearance that all evidence was not considered and analyzed by the ITC in the proper manner. The court, however, is convinced that the Commission's decision is supported by substantial evidence which was adequately analyzed. This does not mean that the evidence could not have supported another conclusion. It only means that substantial evidence supported the Commission's conclusions, which therefore must be sustained.

Accordingly, plaintiff's motion for judgment on the agency record is denied and the negative injury determination of the ITC is affirmed.

⁶ Plaintiff suggests that the Commission's conclusions are not supported by substantial evidence because statistics on one farmer, which were inconsistent with the statistics on the other farmers, were included in the data cited by the Commission. The suggestion that this data be excluded is unacceptable, however, since removing this data would result in eliminating one-eighth of the survey sample. The court believes that eliminating such a substantial amount of the survey data would impair the data more than would including aberrational, though indisputably accurate, information.

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